
(2006) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2292 of 1999

S. Vykuntam and Others

APPELLANT

Vs

G. Narayana and Others

RESPONDENT

Date of Decision : 24-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1, Order 22 Rule 11
Motor Vehicles Act, 1939 — Section 110D
Succession Act, 1925 — Section 306

Citation : (2008) ACJ 40 : (2007) 1 ALD 508

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Bheemsen, for the Appellant; M. Srinivasa Rao, for 3rd Respondent, for the Respondent

Judgement

P.S. Narayana, J.—Vykuntam, the petitioner in O.P. No. 231/89 on the file of Motor Accidents Claims Tribunal - II Additional District Judge at Karimnagar, challenged the order dated 28-12-1990 being aggrieved of the granting of compensation of Rs. 10,000/- only instead of granting Rs. 40,000/- for injuries sustained by him. The said petitioner - the appellant who preferred this Civil Miscellaneous Appeal u/s 110-D of the Motor Vehicles Act, 1939, died pending appeal and appellants 2 to 4 were brought on record as legal representatives of the deceased - sole appellant in C.M.P. No. 20403/2003 dt.4-11-2003 and thus the said legal representatives are further prosecuting the litigation at present.

2. Sri Bheemsen, the learned Counsel representing the appellants would submit that in the facts and circumstances of the case, taking into consideration the nature of injury, the compensation awarded by the Motor Accidents Claims Tribunal - II Additional District Judge, Karimnagar (hereinafter referred to as "Tribunal" for the purpose of convenience) is on the lower side and the compensation as prayed for could have been awarded in the facts and circumstances of the case. The learned Counsel also would maintain that the legal representatives of an injured can further prosecute this litigation since it is

a loss to the estate of the deceased and hence despite the fact that the original injured is no more and died during the pendency of the Civil Miscellaneous Appeal, the same may not come in the way of granting enhancement of compensation by this Court. The learned Counsel had taken this Court through the relevant portions of the order under challenge and would point out that the approach adopted by the Tribunal in the facts and circumstances cannot be said to be justifiable. The Counsel also placed reliance on certain decisions.

3. Per contra, Sri M. Srinivasa Rao, the learned Counsel representing R.3 - The Oriental Insurance Company Limited would maintain that in such cases after the death of the injured, the cause of action does not survive and the legal representatives are not entitled to further prosecute the litigation. The learned Counsel also would submit that at any rate such awarding of compensation cannot be beyond the life time of the injured. Even otherwise, the learned Counsel would contend that in the light of the evidence available on record, inasmuch as the injury is only simple injury, the granting of compensation by the Tribunal is just and reasonable in the facts and circumstances of the case. The Counsel also placed reliance on certain decisions to substantiate his contentions.

4. S. Vykuntam, the appellant who initially filed the appeal, the petitioner, filed O.P. No. 231/99 on the file of the Tribunal claiming compensation of Rs. 40,000/- on account of the injuries said to have been sustained by him. O.P. No. 165/89 also was filed claiming compensation on account of death of the Narasimha Chary in the self-same accident and it is stated that a common order was made and as far as the award made in O.P. No. 165/89 is concerned, the same had attained finality.

5. The facts in brief are that on 3-3-1989 at about 8.15 p.m., the deceased Narsimha Chary returned to his village from Karimnagar in APS RTC Bus and got down the bus at the bus stage. The appellant herein - the petitioner in O.P. No. 231/89 on the file of the Tribunal, Vykuntam, who was travelling in the same bus to Jagtial got down at the aforesaid village from the bus to take tea and the bus was parked on the side of the road at Kurkyl village stage and at that time two lorries bearing Nos. APR-4383 and AAT - 4415 came from Jagtial side i.e., in the opposite direction of the bus with high speed, trying to overtake each other in rash and negligent manner and unmindful of the standing bus at the village bus stage, the lorry bearing No. APR-4383 sped towards Karimnagar to the right of the bus but the lorry bearing No. AAT-4415 sped at a high speed towards Karimnagar from the left side of the standing bus and hit against the deceased and also the injured Vykuntam at the bus stage. Vykuntam received fracture on the left foot and injuries on the left thigh and head and fell down unconscious. The deceased Narsimha Chary received fatal injuries and died instantaneously as his head was ran over by the lorry bearing No. AAT-4415. R.2 was driving the said lorry at that time. The accident occurred only on account of the rash and negligent driving of R.2. For the fracture of left foot, injuries on the left thigh and head, it is stated that the said Vykuntam was unconscious for two days and he

was treated in Civil Hospital, Karimnagar, as inpatient upto 5-3-1989 and thereafter, he was shifted to Secunderabad Private Hospital for treatment. It is stated that the said Vykuntam spent Rs. 8,000/- for medical expenses and at that time he was aged 32 years and was earning Rs. 2,200/- per month by doing carpentry work. It is also stated that he would have earned for more than 30 years if he had not received injuries in the accident. His whole family is depending on his income. In such circumstances, the said Vykuntam claimed compensation of Rs. 40,000/- for loss of income, for mental agony, medical expenses etc.

6. The same was resisted by R.1, R.2 and also R.3 in the O.P. by filing counter affidavits substantially denying the allegations.

7. The following issues were settled in O.P. No. 231/89:

- 1) Whether the petitioner sustained injuries as pleaded by him due to the rash and negligent act of the 2nd respondent driver?
- 2) What was the age and income of the petitioner by the date of the occurrence?
- 3) To what amount the petitioner is entitled towards compensation and if so, against whom?
- 4) To what relief?

The evidence of P.Ws. 1 to 3 and R.W.1 and Ex.A.1 to Ex.A.20 and Ex.B.1 and Ex.B.2 were marked. The Tribunal recorded reasons in detail and ultimately, allowed O.P. No. 165/89 partly and as already referred to supra, the same had attained finality and allowed O.P. No. 231/89 also partly with proportionate costs granting a compensation of Rs. 10,000/- with interest at 12% per annum from the date of petition till the date of realization. Being aggrieved of the fixation of compensation only at Rs. 10,000/-, the petitioner in O.P. No. 231/89 preferred the appeal and as already referred to supra, died pending the Civil Miscellaneous Appeal and the legal representatives are at present further prosecuting the Civil Miscellaneous Appeal. The said Vykuntam was examined as P.W.3 who deposed that he received injuries on the left side of the body including left leg foot and he had received 3 injuries on the left leg and one injury on the head and fell down unconsciously and regained conscious after two days. The facts narrated by P.W.3 had been dealt with in detail at para No. 16. The medical certificate - Ex.A.4 issued by Dr. Ramachander and also Ex.A.5, Ex.A.6 to Ex.A.15, Ex.A.17 and Ex.A.18 also had been taken into consideration. The Tribunal observed that the medical certificate Ex.A.18 would not disclose any grievous injury and it shows simple injury. The Tribunal, however, observed that the evidence of P.W.2 corroborates the evidence of P.W.3 that he received grievous injury on the left foot. In *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* 1986 AC.J.440 at paras 6, 7 and 9 it was observed as hereunder:

So far as this country is concerned, which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925, which

provides as follows:

306. Demands and rights of action of or against deceased survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Section 306 speaks of an action and not of an appeal. Reading Section 306 along with Rules 1 and 11 of Order XXII of the Code of Civil Procedure, 1908, it is, however, clear that a cause of action for defamation does not survive the death of the appellant.

Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff-respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

The position, therefore, is that had the Appellant died during the pendency of his suit, the suit would have abated. Had he died during the pendency of the appeal filed by him in the District Court, the appeal would have equally abated because his suit had been dismissed by the trial Court. Had he, however, died during the pendency of the second appeal filed by the Respondent in the High Court, the appeal would not have abated because he had succeeded in the first appeal and his suit had been decreed. As, however, the High Court allowed the second appeal and dismissed the suit, the present Appeal by Special Leave must abate because what the Appellant was seeking in this Appeal was to enforce his right to sue for damages for defamation. This right did not survive his death and accordingly the Appeal abated automatically on his death and his legal representatives acquired no right in law to be brought on the record in his place and stead.

It is needless to say that this is a decision in relation to right to sue and the maxim "*actio personalis moritur cum persona*" in relation to claim of the damages for defamation. The learned Counsel also placed strong reliance on *Rani v. Nazeer III* (2006) ACC 563 wherein it was held that where the injured died

after 3 1/2 years from the date of accident during the pendency of the claim petition and the injured not died due to injury, the claim is awarded only for period up to date of death of injured and not for subsequent period and the Tribunal had not committed any error in not awarding compensation for subsequent period. The Division Bench of this Court in N.R. Patel and Co. and Others Vs. Smt. T. Aparna and Others, at para 51 observed as hereunder:

To sum up, the original petitioner, died during the pendency of the trial, continued by the Legal Representatives. He sustained injuries to the brain and other parts of the body, fell in coma, from which he never recovered. His death was directly attributable to the injuries sustained in the motor vehicle accident. He was a businessman, aged 36 years by the date of filing of the petition. The family spent around Rs. 6,00,000/- towards medical and other expenses, supported by the evidence of medical officers. It was proved that there was loss of income to a tune of Rs. 10,14,000/-. It was considered as loss to the estate. An amount of Rs. 1,00,000/- was awarded towards pain and suffering as non-pecuniary loss. In awarding Rs. 17,10,000/-, I do not see any flaw either in appreciation of fact or law in this regard.

Reliance also was placed by the learned Counsel for appellants on the decision of the Division Bench in Vanguard Insurance Co. v. C. Hanumantha Rao 1975 (1) An.W.R., 327. In Naseeban and Another Vs. Surendra Pal and Others, the Rajasthan High Court at partners 6 and 8 observed as hereunder:

Section 306 of the Indian Succession Act provides that the demands and rights of action of deceased shall survive to his executor/administrator, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party. According to this Section, only the claims to the personal or bodily injuries will die with the death of the claimant and not the claim regarding the loss caused to the estate of the deceased.

The Judgments passed in Calcutta Insurance Ltd 1970 ACJ 344 and Om Sharan's case AIR 1981 Rajasthan (NOC) 202 are not on the point that the loss caused to the estate will also die with the deceased. The Judgment of Hon'ble Supreme Court passed in Melepurath Sankunni's case 1986 A.C.J., 44 also supports the view taken in Sampati Lal's case (RLW 1985, 220 : II (1985) ACC 467). In that case the claim of the claimant was decreed. During the pendency of the appeal the claimant died. The Apex Court held that decretal debt forms part of the estate of the deceased and the appeal from a decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff- respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of deceased respondent - plaintiff. Under these circumstances, in my opinion, the claim regarding damage on account of pains, suffering and mental agony to the deceased will not survive but the claim regarding loss to the property will survive and the appellants are entitled to continue the proceedings. The order passed by the learned Judge refusing to

take on record the legal-heirs of the deceased claimant is perverse and deserves to be set aside.

In *Sampati Lal v. Hari Singh and Ors.* 1985 A.C.J., 539 at paras 12 and 13 it was observed as hereunder:

The maxim *actio personalis moritur cum persona* relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In this way, this maxim stands considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act. Section 306 clearly lays down that all demands whatsoever and all rights to prosecute or defend in an action or special proceeding existing in favour of or against a person at the time of his death survive except causes of action for defamation etc., which come to an end with the death of the injured. The loss to the estate is, thus, not covered by the exception contained in Section 306 of the Indian Succession Act. A few authorities on the point may be noticed. In *Kongare Narayanamma v. Uppala China Simhachalam* 1975 ACJ 448 (AP), it was observed:

21-A. In making a claim, a claimant could claim loss to his property of whatever description caused by the accident. There is no warrant for holding that the cause of action in respect of that loss would not survive to the legal representatives.

In *Thailammai v. A.V. Mallayya Pillai* 1981 ACJ 185 Madras, it was held that the cause of action in respect of damage to the estate of the deceased survives and passes over to his legal representatives. In *Jyoti Ram v. Chamanlal* 1984 A.C.J. 645 (P&H), a Division Bench of the Punjab & Haryana High Court took the view that the right to sue survives to the legal representatives of the deceased-injured in respect of claim on account of the loss to the estate. On a careful consideration, I find myself in complete agreement with the views expressed in the above two cases. I am, therefore, of the opinion that if the claim under the Act also relates to the estate of the deceased, the action survives on the death of the claimant and passes over to his legal representatives.

In the instant case, the break-up of the compensation, as disclosed in the application, is (a) Rs. 6,800/- as the amount incurred by the deceased for the treatment of his injuries caused in the accident, (b) loss of income at the rate of Rs. 300/- per month for twelve years, and (c) Rs. 20,000/- on account of mental and physical pain, the treatment of the injuries sustained by the deceased is a loss to the estate. If this amount would not have been spent by him, it was to come in the hands of the claimants. Likewise, the loss of income at the rate of Rs. 300/- per month is also a loss to the estate of the deceased so far as he remained alive. Had he not sustained the injuries, the loss of income would not have occurred. If it had not occurred, the claimants would have received it on the death of the injured. The loss of income for the period from the accident to the death of the injured amounts to a loss to the estate. The loss of income occurring after the death of the deceased is not a loss to the estate. The compensation for

the loss of income for the period subsequent to the death of the victim cannot, therefore, be claimed. So also the amount of Rs. 20,000/- claimed on account of mental and physical pain, agony and suffering is not a loss to the estate and the action dies on his death. It does not survive and pass over to his legal representatives.

In Kannamma Vs. Deputy General Manager, the Full Bench of Karnataka High Court at para 10 observed as hereunder:

What emerges from the above consideration of the question relating to a claim by a person for compensation for personal (bodily) injuries sustained in a motor accident on such person's death not caused due to such injuries, surviving to such person's legal representatives, may now be summarised:

(1) The common law rule *actio personalis moritur cum persona* as embodied in Section 306 of the Indian Succession Act since applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/her legal representatives;

(2) Cause of action for personal injuries being founded on tort (motor accident caused by the tortfeasor), injured person's claims for damages under heads recognised by common law and not by statute, based on such tort and not independently of it cannot, on such person's death, survive for prosecution by his/her executors or administrators (or legal representatives) since Section 306 of the Indian Succession Act, in express terms, declares that the cause of action in favour of a person for personal injuries (tort) does not survive on such person's death to his/her executors or legal representatives;

(3) A claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the first appellate Court does not survive on such person's death not caused as a consequence of personal injuries to his legal representatives;

(4) A claim of a person for compensation for personal injuries if has resulted in award of the Claims Tribunal or decree of the appellate Court, survives to his legal representatives on his death, even if such death is not the consequence of personal injuries sustained by him and hence, if such award or decree is disputed in the first appellate Court, or the second appellate Court the same could be resisted by the legal representatives of the claimant;

(5) The Division Bench decision of this Court in Muniyappa's case 1984 A.C.J., 299 (Karnataka), related to an appeal by the claimant where enhanced compensation was sought only for personal injuries suffered in the motor accident by the claimant and where no compensation or enhanced compensation was sought by the claimant for properties damaged or lost as a result of the motor accident;

(6) Legal position enunciated in the Division Bench decision of this Court in

Muniyappa's case 1984 A.C.J., 299 (Karnataka), as regards survival of cause of action in personal injury claims arising out of the motor accidents being well in accordance with the law laid down in the matter in the Supreme Court decisions in Melepurath's case 1986 A.C.J. 440 (SC) and M. Veerappa Vs. Evelyn Sequeira and Others, , has to be upheld; and

(7) Legal positions stated in Kongara Narayanamma's case 1975 A.C.J.448 (AP), Thailammai's case 1981 A.C.J., 185 (Madras), Joti Ram's case 1984 A.C.J., 645 (P&H) and Sampati Lal's case 1985 A.C.J. 539 (Rajasthan), as regards survival of cause of action in personal injury claims arising out of motor accidents by concerned learned Judges, not being in accordance with the law laid down in the matter by the Supreme Court decision in Melepurath's case 1986 A.C.J.,440 (S.C.) and M. Veerappa Vs. Evelyn Sequeira and Others, , has to be dissented.

The Division Bench of Madhya Pradesh High Court in Virendra Singh Vs. Ashok Kumar and Others, while dealing with abatement of appeal and death of injured while pending appeal for enhancement of compensation observed that the appeal abates but however legal representatives of the deceased are entitled to receive the compensation already awarded which formed part of the estate of the deceased. In fact, the Division Bench followed Melepurath Sankunni Ezhuthassan v. Thekkittil Geopalankutty Nair 1986 ACJ 440 (S.C.) and Chisalal (deceased by L.R's) Vs. Nihal Singh and Others, . Reliance also was placed on Nurani Jamal and others Vs. Naram Srinivasa Rao and others, and Adapaka Eswaramma and Others Vs. N. Chandra Sekhar, . In United India Insurance Company Ltd. Vs. E. Laxma Reddy (died) per LRs. and Another, the learned Judge of this Court while dealing with compensation on account of personal injury and death of victim during pendency of proceedings, held that the liability of owner/insurer not ends with death of claimant before settlement of claim and the liability subsists and the legal representatives step into the shoes of the claimant and are entitled to the amount which deceased claimant would have recovered and the said amount to be treated as estate of the legal representatives. In United India Insurance Company Limited Vs. G. Kishen Rao and Others, the learned Judge of this Court while dealing with the quantum of compensation to be fixed, the claimant injured in accident and suffered fracture of his leg and aggrieved by the order of the Tribunal, preferred appeal challenging the quantum of compensation and during the pendency of petition, the first claimant died natural death, all items coming within the scope of "loss of estate", entitled to be claimed by LRs., of injured and the legal representatives of the first claimant are entitled for compensation for loss of estate, transport charges, medical expenses, extra- nourishment and claimants are not entitled for amount awarded by the Tribunal towards future loss of earnings on account of partial permanent disability and Rs. 10,000/- towards pain and suffering and thus claimants are entitled to compensation of Rs. 37,000/- and accordingly the appeal is partly allowed.

8. In the light of the views expressed by this Court referred to supra, this Court is of the considered opinion that the legal representatives of the injured even

after the death of the injured during the pendency of the appeal are entitled to further prosecute the appeal, to the specified extent of loss of estate, and nothing far and nothing beyond. In the light of the facts and circumstances and also in view of the evidence adduced by the parties, both oral and documentary evidence, this Court is satisfied that it would be just and reasonable to fix Rs. 5,000/- in addition to Rs. 10,000/- already granted and as far as the enhanced amount of Rs. 5,000/- is concerned, the appellants are entitled to only 7.5% per annum interest.

9. Accordingly, the award made by the Tribunal is hereby modified to the extent indicated above. Appeal is partly allowed. No costs.